



GLENDALE OFFICE

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March 29, 2012

Via ECF

Honorable Chief Magistrate Steven M. Gold
U.S. DISTRICT COURT
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Blumenthal Distributing, Inc. dba Office Star Products and Tung-Hua Su vs. Executive Chair Seating, Inc. dba Shop Seating of Brooklyn*
Civil Action No. 1:10-CV-01280-CBA-SMG
CPH Ref. O177:100.5

Dear Judge Gold:

On January 10, 2012, the Court issued a minute order in which it stated that the depositions of Plaintiff and its personnel should "be held as soon as practicable but no later than 4/1."

On Friday March 23, 2012, Defendant, by its attorney Levi Huebner, scheduled the depositions of Plaintiff Blumenthal Distributing, Inc., Barry Barsamian, Richard Blumenthal, Jennifer Blumenthal and Fred Rueda for April 2, 2012 with the depositions to be taken in San Diego, California. I telephoned Attorney Huebner concerning the depositions on Monday March 26, and informed him that Plaintiff would seek a protective order concerning the situs of the depositions which was more than one hundred miles from Plaintiff's place of business in Ontario, California. In response, Mr. Huebner stated that I was lucky that he did not schedule the depositions in San Francisco. After informing him that I would seek a protective order if he maintained that position, Mr. Huebner agreed to take the depositions in Ontario, California provided that he could take the depositions on April 2 and 3 to accommodate his Kaddish requirements. I agreed. Later that day I became aware that one of the deponents, Fred Rueda, would be out of the country on April 2, returning on April 5, and so informed Attorney Huebner. Mr. Huebner responded on March 27, 2012 that he could not conduct the depositions on April 5 due to Passover and suggested that the depositions be conducted on consecutive days after Passover, that is, after April 14, 2012. I responded on March 28, 2012 that I could not agree to such a change because the depositions would be after the court-ordered close of discovery and would require a change to the briefing schedule for summary judgment motions. A true copy of the

James B. Christle (1904-1959)
Robert L. Parker (1920-1980)
C. Russell Hale (1916-2004)

David A. Dillard
Thomas J. Daly
Edward R. Schwartz
John D. Carpenter
Wesley W. Monroe
David A. Plumley
Gregory S. Lampert
Mark Garscia
Syed A. Hasan
Robert A. Green
Howard A. Kroll
Michael J. MacDermott
Anne Wang
Constantine Marantidis
Gary J. Nelson
Raymond R. Tabandeh
Josephine E. Chang
Jun-Young E. Jeon
Brian K. Brookey
David J. Steele
Peter C. Hsueh
Oliver S. Bajracharya
Lauren E. Schneider
G. Warren Bleeker
Daniel R. Kimbell
Gabriel Fitch
Tiffany A. Parcher
Steven E. Lauridsen
Derek W. Yeung
Jason C. Martone
Joshua T. Chu
David W. Klinger
Bruce A. Wagar, Ph.D.
Phyllis C. Simon
Justin O. Ehresmann, Ph.D.
Shaun P. Lee
Ryan M. Swank
Faustina Y. Lee
Eric C. Arnell
Dustin R. Szakalski

Of Counsel

Walter G. Maxwell
Richard A. Wallen

Patent Agents

Nicole Ballew Chang, Ph.D.

Honorable Chief Magistrate Steven M. Gold
U.S. DISTRICT COURT
March 29, 2012
Page 2

email chain of these communications is attached as Exhibit A hereto.

In response to my latest email, Mr. Huebner telephoned me to state that since I was refusing to reschedule the depositions to after April 12 as he had requested, the depositions would go forward in San Diego on April 2, 2012 and that he expected that all of the named deponents, including Mr. Rueda, to appear for the deposition and Mr. Blumenthal to appear in the afternoon even though he had a flight during that time. See Amended Notices of Deposition served on March 28, 2012, Exhibit B hereto. In response to my repeated statement that San Diego was too far for him to require the deponents to travel, Atty. Huebner stated that the court order required the depositions to be taken in California but did not state where.

In view of the foregoing, Plaintiff respectfully requests that the Court, pursuant to Fed. R. Civ. P. 26(c), issue an order that (1) the depositions of Plaintiff Blumenthal Distributing, Inc., Richard Blumenthal, Jennifer Blumenthal, and Barry Barsamian be conducted in Ontario, California on April 2, 2012, if taken at all, with Richard Blumenthal's deposition to commence at 9:00 a.m. and to conclude by no later than 11:00 a.m.; and (2) that the deposition of Fred Rueda be conducted (presumably by telephone) after he returns to the United States on April 5, 2012.

Respectfully submitted,

/s/ Edward R. Schwartz
Edward R. Schwartz

ERS/ses

cc: Levi Huebner (Via ECF)
Elie Poltorak (Via ECF)

SES PAS1167214.1-*03/29/12 6:55 AM

EXHIBIT A

Ed Schwartz

From: Levi Huebner [newyorklawyer@msn.com]
Sent: Wednesday, March 28, 2012 2:01 PM
To: Ed Schwartz
Cc: 'Elie Poltorak'
Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.
Attachments: Notice for Corporation 2.pdf; Notice for Plaintiffs 2.pdf

Dear Mr. Schwartz:

I have attempted to contact your office numerous times to schedule depositions at mutually convenient times without success. Thus, I noticed same by subpoena. Moreover, I have attempted to accommodate your clients by scheduling same for a Monday April 2, 2012 rather than Sunday April 1, 2012.

During our conversation on March 26, 2012 you informed me that you had additional difficulty producing Rueda because you believed he was out of the country and you informed me that you would have difficulty producing Richard Blumenthal in the afternoon because he has a flight for Chicago scheduled in the afternoon of April 2, 2012. However, you did not raise any objection to April 2, 2012. Moreover, you indicated that you had no objection to holding the depositions on April 2 & 3 so that we could start later in the morning so that I could have time to attend (morning services) and conclude the depositions earlier in the day so that I could attend (afternoon services) for my late mother of blessed memory.

In an effort to schedule the depositions pursuant to the above agreement I contacted your office by phone and by e-mail. However, after my phone calls to your office on March 27, 2012 went unanswered, and after my e-mail dated March 27, 2012, went unanswered you wait until 1:49 p.m. this afternoon to inform me that you have changed your mind and your clients will only attend the depositions on April 1, 2012.

In light of the foregoing and your belated refusal at my attempts to accommodate your clients please find attached the Subpoenas calling for the deposition of your clients on April 1, 2012 at our co-counsel's office in San-Diego California.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

478 Malbone Street, Suite 100
Brooklyn, NY 11225
Tel: (212) 354-5555
Fax: (347) 350-8789

EMAIL: NEWYORKLAWYER@MSN.COM

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3/28/2012 2:45 PM

you have received this transmission in error, please notify us by telephone immediately, so that we can arrange for the return of the original documents to us at our cost.

IRS CIRCULAR 230 DISCLOSURE: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code.

From: Ed Schwartz [mailto:Ed.Schwartz@cph.com]

Sent: Wednesday, March 28, 2012 1:49 PM

To: 'Levi Huebner'

Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

I appreciate your willingness to take the subject depositions in Ontario. However, as to the timing of the depositions, as you are aware, the scheduling order which issued on January 10, 2012 states that discovery closes on April 1, 2012. You chose to schedule the depositions at the close of this period, rather than earlier in the 10 week period since issue of the scheduling order, thereby creating the present scheduling problem. In any event, we cannot agree to discovery after April 1 in violation of the order. Further, the order requires summary judgment motions to be filed by April 23, 2012 and we intend to meet this deadline. In this regard, it is our position that the case has gone on for far too long already and therefore we will proceed according to the schedule which is in place. In view thereof, please let me know by return e-mail today whether you will be proceeding with the depositions on April 1 at the offices of Office Star in Ontario.

From: Levi Huebner [mailto:newyorklawyer@msn.com]

Sent: Tuesday, March 27, 2012 1:59 PM

To: Ed Schwartz

Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

Dear Mr. Schwartz:

I understand that you want to produce your clients for deposition in Ontario California. Furthermore, I understand that Barry Barsamian, Richard Blumenthal, and Jennifer Blumenthal are available. However, Fred Rueda will be out of town until April 5, 2012.

However, April 5, 2012 is impossible for me because of the upcoming Passover holiday. Additionally, as I informed you Ontario California creates limitation due to my personal obligations. Thus, if a deposition is to be held in Ontario California it would have to be split over two days.

In furtherance of our discussion I suggest that we select two consecutive days, after Passover, (April 6, 2012 – April 14, 2012) that are convenient for all parties.

Thank you for your consideration regarding this matter. Kindly get back to me at your earliest convenience.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

3/28/2012 2:45 PM

478 Malbone Street, Suite 100
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From: Ed Schwartz [<mailto:Ed.Schwartz@cph.com>]
Sent: Monday, March 26, 2012 7:39 PM
To: 'Levi Huebner'
Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

I have confirmed my understanding and determined that Rueda will be out of the country on April 2 and will be returning on April 5. FYI, he will not be on my trial witness list.

From: Levi Huebner [<mailto:newyorklawyer@msn.com>]
Sent: Friday, March 23, 2012 3:46 PM
To: Ed Schwartz
Subject: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

Dear Mr. Schwartz:

Sent herewith please find the Deposition Notices regarding this action.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

478 Malbone Street, Suite 100
Brooklyn, NY 11225
Tel: (212) 354-5555
Fax: (347) 350-8789

EMAIL: NEWYORKLAWYER@MSN.COM

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EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
**BLUMENTHAL DISTRIBUTING, INC.
dba OFFICE STAR PRODUCTS AND
TUNG-HUA SU,**

Plaintiffs,

-against-

**EXECUTIVE CHAIR, INC. dba SHOP
SEATING OF BROOKLYN,**

Defendant.

Case No. 1:10-CV-01280
(CBA-SMG)

AMENDED NOTICE

**NOTICE OF RULE 30(b)(6)
DEPOSITION OF PLAINTIFF
BLUMENTHAL DISTRIBUTING,
INC. WITH REQUEST FOR
PRODUCTION OF DOCUMENTS
AND TANGIBLE THINGS**

DATE: April 1, 2012

TIME: 9:00 a.m.

PLACE: SILVER & SILVER APC

**600 West Broadway,
Suite 1520**

S. Diego, CA 92101

(619) 231-1600

-----X
**TO PLAINTIFF BLUMENTHAL DISTRIBUTING AND ITS ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Defendant Executive Chair, Inc. ("Executive") will take the deposition upon oral examination of Plaintiff Blumenthal Distributing, Inc. ("Blumenthal"), by a witness or witnesses designated by Blumenthal to testify concerning each of the matters set forth in Attachment A hereto. The deposition will be conducted beginning at 9:00 a.m. on April 1, 2012 at the law offices of SILVER & SILVER APC, located at 600 West Broadway, Suite 1520, S. Diego, CA 92101; telephone number (619) 231-1600, or at another time and place mutually agreed upon by counsel for the parties and the deponent. The deposition will be taken before an officer authorized to administer oaths by the laws of the United States and will be stenographically recorded.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Blumenthal shall designate one or more of its officers, directors, managing agents or other persons knowledgeable of the topics identified on Schedule A hereto, which persons shall consent to testify on Blumenthal's behalf.

Under Rule 30(b)(5) of the Federal Rules of Civil Procedure, the deponent is requested to bring the documents and tangible things designated on Schedule B to this notice to the deposition and to permit them to be inspected and copied.

Dated: Brooklyn, New York
March 28, 2012

Respectfully submitted,

POLTORAK PC

/ s / Levi Huebner (LH1360)

By: _____
Elie C. Poltorak (EP8791)
Levi Huebner (LH1360)

1650 Eastern Parkway, Suite 400
Brooklyn, NY 11233
(718) 943-8815

Attorneys for Defendant

TO: CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

Attorneys for Plaintiffs

SCHEDULE A

1. Blumenthal's alleged license and/or assignment of United States Patent No. D510,488 (the "'488 Patent"), including the specific terms thereof and the circumstances under which such license was granted.
2. Any communications or dealings with co-Plaintiff Tung-Hua Su.
3. The alleged validity of the '488 Patent.
4. Any prior art relevant to the '488 Patent.
5. Mesh-backed chairs offered for sale by Blumenthal prior to May, 2004.
6. Alleged points of novelty embodied in the '488 Patent.
7. Alleged similarities between the Accused Chair and the '488 Patent.
8. Alleged similarities between the Accused Chair and Blumenthal's 5500/5700 chairs.
9. Blumenthal's efforts and expenditures to promote or market the 5500/5700 chairs.
10. The alleged distinctiveness of the 5500/5700 chairs.
11. Blumenthal's sales figures for the 5500/5700 chairs.
12. Blumenthal's profits from sales of the 5500/5700 chairs.
13. The basis for allegations asserted by Blumenthal in its pleadings and other papers filed in the above-captioned action.
14. Blumenthal's responses to interrogatories in this action.
15. Documents produced by Blumenthal in response to Defendant's request for the production of documents.
16. Communications between Blumenthal and non-parties concerning this lawsuit.

SCHEDULE B

1. An exemplar of Blumenthal's 5500 chair.
2. An exemplar of Blumenthal's 5700 chair.

CERTIFICATE OF SERVICE

I certify that on March 28, 2012, pursuant to Federal Rules of Civil Procedure, a true and correct copy of the foregoing document described as NOTICE OF DEPOSITION was served on the parties in this action via first class mail and via email to:

CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

Attorneys for Plaintiffs

Phone: (626) 795-9900
Fax: (626) 577-8800
Email: ers@cph.com

Attorneys for Plaintiffs Blumenthal Distributing, Inc. dba Office Star Products and Tung-Hua Su

Dated: Brooklyn, New York
March 28, 2012

/ s / Levi Huebner

Levi Huebner

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
**BLUMENTHAL DISTRIBUTING, INC.
dba OFFICE STAR PRODUCTS AND
TUNG-HUA SU,**

Plaintiffs,

-against-

**EXECUTIVE CHAIR, INC. dba SHOP
SEATING OF BROOKLYN,**

Defendant.

Case No. 1:10-CV-01280
(CBA-SMG)

AMENDED NOTICE

**NOTICE OF DEPOSITION OF
PLAINTIFF BLUMENTHAL
DISTRIBUTING, INC.**

DATE: April 1, 2012

TIME: 12:00 p.m.

**PLACE: SILVER & SILVER APC
600 West Broadway,
Suite 1520
S. Diego, CA 92101
(619) 231-1600**

-----X
**TO PLAINTIFF BLUMENTHAL DISTRIBUTING, INC. dba OFFICE STAR
PRODUCTS AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Defendant Executive Chair, Inc. ("Executive") will take the deposition upon oral examination of Plaintiff Blumenthal Distributing, Inc. ("Blumenthal"), by its officers listed below. The deposition will be conducted at the dates and times listed below, at the law offices of SILVER & SILVER APC, located at 600 West Broadway, Suite 1520, S. Diego, CA 92101; telephone number (619) 231-1600, or at another time and place mutually agreed upon by counsel for the parties and the deponent. The deposition will be taken before an officer authorized to administer oaths by the laws of the United States and will be stenographically recorded.

Deponent

Date and Time

Barry Barsamian

April 1, 2012, 12:00 p.m.

Richard Blumenthal

April 1, 2012, 2:00 p.m.

Jennifer Blumenthal

April 1, 2012, 4:00 p.m.

Fred Rueda

April 1, 2012, 6:00 p.m.

Dated: Brooklyn, New York
March 28, 2012

Respectfully submitted,

POLTORAK PC

/ s / Levi Huebner (LH1360)

By: _____
Elie C. Poltorak (EP8791)
Levi Huebner (LH1360)

1650 Eastern Parkway, Suite 400
Brooklyn, NY 11233
(718) 943-8815

Attorneys for Defendant

TO: CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on March 28, 2012, pursuant to Federal Rules of Civil Procedure, a true and correct copy of the foregoing document described as NOTICE OF DEPOSITION was served on the parties in this action via first class mail and via email to:

Edward R. Schwartz (ES7787)
CHRISTIE, PARKER & HALE, LLP
350 West Colorado Blvd., Suite 500
Pasadena, California 91105

Phone: (626) 795-9900
Fax: (626) 577-8800
Email: ers@cph.com

Attorneys for Plaintiffs Blumenthal Distributing, Inc. dba Office Star Products and Tung-Hua Su

Dated: Brooklyn, New York
March 28, 2012

/ s / Levi Huebner

Levi Huebner